

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

ROGER SAULN,

Plaintiff(s),

v.

PODS ENTERPRISES, LLC,

Defendant(s).

Case No. 2:2-CV-497 JCM (DJA)

ORDER

Presently before the court is defendant PODS Enterprises, LLC's ("PODS") motion for summary judgment. (ECF No. 21). Plaintiff Roger Sauln filed a response (ECF No. 27), to which PODS replied (ECF No. 31). The court GRANTS PODS's motion for summary judgment.

I. Background

This case is about alleged disability and employment discrimination. There is no genuine dispute over the following facts. Plaintiff was a sales consultant at PODS from April 2, 2018, to February 4, 2019, when he was fired. (ECF No. 21 at 3, 6–7). Plaintiff filed this suit in 2022 alleging gender discrimination under Title VII, disability discrimination under the Americans with Disabilities Act ("ADA"), and age discrimination under 29 U.S.C. § 623. (ECF No. 1).

PODS requires its sales consultants to meet monthly sales quotas, which plaintiff failed to do for the six months preceding his termination. (ECF No. 7 at 6–7). In October of 2018, plaintiff was verbally warned about his failure to follow company procedures during sales calls.¹ (*Id.* at 5). In December of 2018, plaintiff was placed on a "performance improvement plan" ("PIP") after

¹ Though plaintiff claims that his manager's comments to him in this regard did not rise "to the level of a warning," he does not dispute the fact a conversation occurred. (ECF No. 27 at 12).

1 consistently failing to meet his required sales quota. (*Id.*). The PIP included additional coaching,
 2 monitoring plaintiff's sales calls, and providing verbal feedback. (*Id.* at 5–6). After his
 3 performance did not improve, PODS finally terminated plaintiff's employment on February 4,
 4 2019. (*Id.* at 6–7).

5 It is also undisputed that plaintiff contracted laryngitis and took approximately a week and
 6 a half off from work sometime in late November or early December. (ECF No. 22 at 117–118).
 7 This bout of sickness forms the basis for plaintiff's ADA claim.

8 **II. Legal Standard**

9 The Federal Rules of Civil Procedure allow summary judgment when the pleadings,
 10 depositions, answers to interrogatories, and admissions on file, together with the affidavits (if any),
 11 show that “there is no genuine dispute as to any material fact and the movant is entitled to judgment
 12 as a matter of law.” Fed. R. Civ. P. 56(a). Information may be considered at the summary
 13 judgment stage if it would be admissible at trial. *Fraser v. Goodale*, 342 F.3d 1032, 1036 (9th Cir.
 14 2003) (citing *Block v. City of Los Angeles*, 253 F.3d 410, 418-19 (9th Cir. 2001). A principal
 15 purpose of summary judgment is “to isolate and dispose of factually unsupported claims.” *Celotex*
 16 *Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986). In judging evidence at the summary judgment
 17 stage, the court does not make credibility determinations or weigh conflicting evidence. Rather,
 18 it draws all inferences in the light most favorable to the nonmoving party. *See T.W. Electric*
 19 *Service, Inc. v. Pacific Electrical Contractors Ass'n*, 809 F.2d 626, 630–31 (9th Cir.1987).

20 When, as is the case here, the non-moving party bears the burden of proof at trial, the
 21 moving party can meet its burden on summary judgment in two ways: (1) by presenting evidence
 22 to negate an essential element of the non-moving party's case; or (2) by demonstrating that the
 23 non-moving party failed to make a showing sufficient to establish an element essential to that
 24 party's case on which that party will bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S.
 25 at 323–24. If the moving party fails to meet its initial burden, summary judgment must be denied,
 26 and the court need not consider the non-moving party's evidence. *See Adickes v. S.H. Kress &*
 27 *Co.*, 398 U.S. 144, 159–60 (1970).

1 If the moving party satisfies its initial burden, the burden then shifts to the opposing party
 2 to establish that a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v. Zenith*
 3 *Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute, the
 4 opposing party need not establish a material issue of fact conclusively in its favor. It is sufficient
 5 that “the claimed factual dispute be shown to require a jury or judge to resolve the parties’ differing
 6 versions of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626,
 7 630 (9th Cir. 1987). However, the nonmoving party cannot avoid summary judgment by relying
 8 solely on conclusory allegations that are unsupported by factual data. *See Taylor v. List*, 880 F.2d
 9 1040, 1045 (9th Cir. 1989). Instead, the opposition must go beyond the assertions and allegations
 10 of the pleadings and set forth specific facts by producing competent evidence that shows a genuine
 11 issue for trial. *See Celotex*, 477 U.S. at 324. If the nonmoving party’s evidence is merely colorable
 12 or is not significantly probative, summary judgment may be granted. *Anderson v. Liberty Lobby,*
 13 *Inc.*, 477 U.S. 242, 249–50 (1986).

14 **III. Discussion**

15 Plaintiff did not oppose summary judgment as to his age discrimination claim, stating that
 16 he “dismisses” this claim. (ECF No. 27 at 11). Summary judgment in favor of PODS is therefore
 17 granted as to this claim. The court next addresses plaintiff’s Title VII and ADA claims.

18 **A. Title VII Claim**

19 The court uses the *McDonnell Douglas* burden-shifting framework when evaluating Title
 20 VII sex discrimination claims. *Hawn v. Executive Jet Mgmt., Inc.*, 615 F.3d 1151, 1156 (9th Cir.
 21 2010); *see also Cornwell v. Electra Cent. Credit Union*, 439 F.3d 1018, 1034–35 (9th Cir. 2006).
 22 Under this analysis, plaintiffs must first establish a prima facie case of employment discrimination.
 23 *Noyes v. Kelly Servs.*, 488 F.3d 1163, 1168 (9th Cir. 2007). To establish a prima facie claim of
 24 discrimination, a plaintiff must present evidence giving rise to the inference that (1) he is a member
 25 of a protected class; (2) he performed his job satisfactorily; (3) he suffered an adverse employment
 26 action; and (4) the employer treated him differently than similarly situated individuals who do not
 27 belong to the same protected class. *Leong v. Potter*, 347 F.3d 1117, 1124 (9th Cir. 2003).

1 If plaintiff establishes a *prima facie* case, “the burden of production, but not persuasion,
 2 then shifts to the employer to articulate some legitimate, nondiscriminatory reason for the
 3 challenged action.” *Hawn*, 615 F.3d at 1156. If defendant meets this burden, plaintiff must then
 4 raise a triable issue of material fact as to whether the defendant's proffered reasons for their
 5 terminations are mere pretext for unlawful discrimination. *Noyes*, 488 F.3d at 1168. Pretext may
 6 be shown either indirectly, by showing the employer's proffered explanation is unworthy of
 7 credence because it is internally inconsistent or otherwise not believable, or directly, by showing
 8 that unlawful discrimination more likely motivated the employer. *Lyons v. England*, 307 F.3d
 9 1092, 1113 (9th Cir. 2002). Circumstantial evidence must be specific and substantial. *Id.*

10 PODS has demonstrated that plaintiff cannot make a showing sufficient to establish
 11 elements two and four of *McDonnell Douglas*, and plaintiff does not demonstrate a genuine issue
 12 of material fact in opposition. Plaintiff does not dispute that PODS has a mandatory sales quota
 13 for all sales consultants; he does not dispute that he was made aware of this sales quota during
 14 training; he does not dispute that he failed to meet PODS's required sales quotas for six consecutive
 15 months; he does not dispute that PODS put him on the PIP and provided him with additional
 16 coaching prior to firing him;² and he admits to not following company procedure on sales calls in
 17 at least three instances.³ (ECF No. 27). It is therefore undisputed that plaintiff was not performing
 18 his job satisfactorily when he was fired.

19 Plaintiff attempts to circumvent this defect in his Title VII claim by asserting that similarly
 20 underperforming female employees were not fired and were given more time than him to bring up
 21 their sales numbers. But plaintiff provides the court with no evidence to support this assertion
 22 aside from unspecific and conclusory statements in his declaration.⁴ Plaintiff declares that
 23 “similarly situated female employees were provided regular coaching, and . . . supervisors closed
 24

25 ² Though plaintiff disputes the *extent* of additional coaching he was provided, he does admit
 26 that *some* coaching occurred. (ECF No. 27 at 14).

27 ³ Plaintiff made sarcastic remarks on sales calls “at least twice” and failed to ask for a sale
 at the end of a call, “once or twice.” (Pl.'s Dep., ECF No. 22 at 122–123).

28 ⁴ Indeed, plaintiff's own declaration is the *only* evidence he provides in support of his
 response to PODS's summary judgment motion.

1 sales for one of them to increase that woman's sales numbers." (ECF No. 27 at 123). Yet, during
 2 his deposition, plaintiff admitted that he does not know whether these other female employees
 3 were on a PIP, whether they brought up their sales numbers while on PIP, the amount of time they
 4 were given to bring up their sales numbers, or whether they were actually fired. (Pl.'s Dep., ECF
 5 No. 22 at 129–134). While the court does not weigh conflicting evidence at the summary judgment
 6 stage, "the general rule is that 'a party cannot create an issue of fact by an affidavit contradicting
 7 his prior deposition testimony.'" *Nelson v. City of Davis*, 571 F.3d 924, 927 (9th Cir.2009)
 8 (quoting *Kennedy v. Allied Mut. Ins. Co.*, 952 F.2d 262, 266 (9th Cir. 1991)). The rationale for
 9 this "sham affidavit" rule is that "a party ought not to be allowed to manufacture a bogus dispute
 10 with himself to defeat summary judgment." *Nelson*, 571 F.3d at 928. Plaintiff has not met his
 11 burden of establishing a prima facie case for sex discrimination, and there is no triable issue of
 12 material fact. The court grants PODS's summary judgment motion as to this claim.

13 B. ADA Claim

14 The ADA prevents covered entities from discriminating against qualified individuals on
 15 the basis of disability when making discharge decisions. 42 U.S.C. § 12112(a). "To set forth a
 16 prima facie disability discrimination claim, a plaintiff must establish that: (1) he is disabled within
 17 the meaning of the ADA; (2) he is qualified (i.e., able to perform the essential functions of the job
 18 with or without reasonable accommodation); and (3) the employer terminated him because of his
 19 disability." *Nunies v. HIE Holdings, Inc.*, 908 F.3d 428, 433 (9th Cir. 2018). The *McDonnell*
 20 *Douglas* burden-shifting framework outlined previously also applies to ADA discrimination
 21 claims. See *Samper v. Providence St. Vincent Med Ctr.*, 675 F.3d 1233, 1237 (9th Cir. 2012);
 22 *Allen v. Pac. Bell*, 348 F.3d 1113, 1114 (9th Cir. 2003) (per curiam). If a plaintiff establishes a
 23 prima facie case, the burden shifts to the employer to demonstrate a "legitimate, nondiscriminatory
 24 reason" for the adverse employment action. *Snead v. Metro. Prop. & Cas. Ins. Co.*, 237 F.3d 1080,
 25 1093 (9th Cir. 2001).

26 While PODS has provided a legitimate, nondiscriminatory reason for firing plaintiff
 27 (plaintiff was not meeting his sales goals), plaintiff does not provide any evidence that PODS fired
 28 him due to a disability or that he was able to perform the essential functions of the job with or

without reasonable accommodation. Plaintiff's disability claim is founded in a brief bout of laryngitis that affected his ability to speak. Even if the court assumes that plaintiff's laryngitis qualifies as a disability under the ADA, it is undisputed that the laryngitis only affected plaintiff's ability to make sales calls for approximately a week and a half in late November or early December. (Pl.'s Dep., ECF No. 22 at 116–17). At that point, plaintiff had already missed his sales quota for several months while *not* suffering from a disability. Plaintiff was even given additional coaching after his return to work, as part of the PIP, and was not fired until the following February. By the time plaintiff was fired, he had failed to meet his sales quota for six consecutive months. Plaintiff additionally fails to cite legal authority or explain how his requested accommodation (work absences) was reasonable.

Plaintiff asks this court to hold that there is a factual dispute regarding the causal connection between his laryngitis and eventual termination yet provides no evidence in support of this request. This court will not find a dispute of fact when the party carrying the burden of proof at trial provides as evidence nothing but his own conclusory and speculative testimony. *Davidson v. Apple, Inc.*, No. 16-CV-04942-LHK, 2019 WL 917060, at *11 (N.D. Cal. Feb. 25, 2019) (explaining that if there is evidence underpinning a conclusory statement, the party opposing summary judgment should “come forward with it” (quoting *Thornhill Pub. Co., Inc. v. GTE Corp.*, 594 F.2d 730, 738 (9th Cir.1979))).

IV. Conclusion

Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that PODS's motion for summary judgment (ECF No. 21) is GRANTED.

The clerk is instructed to enter judgment in favor of PODS and close the case.

DATED September 5, 2023.


UNITED STATES DISTRICT JUDGE